

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 2nd day of July, two thousand and four.

PRESENT:

Hon. John M. Walker, Jr.,  
Chief Judge,  
Hon. Barrington D. Parker, Jr.,  
Hon. Richard C. Wesley,  
Circuit Judges,

-----X  
CLIFFORD J. SCHEINER,

Plaintiff-Appellant,

v.

NEW YORK CITY HEALTH AND HOSPITALS  
CORPORATION, REINALDO AUSTIN, THEODORE  
BANIA, BONNY BARON, GENE BECKER,  
RANDALL BLOOMFIELD, AUDREY-PHILLIPS  
CAESAR, LOUIS CAMILIEN, DEVITT  
ELVERSON, JAMES FINE, EDWARD FISHKIN,  
RONALD HARTNET, CHARLES HYMAN, ANDREW  
KARLIN, LOUIS KOHL, RONALD B. LOWE,  
LUIS R. MARCOS, RICHARD T. MEEHAN, JR.,  
PEDRO PENHA, VENKATESALU RAJAGOPAL,  
JAMES REILLY, PHILIP RICE, MARTIN SALWEN,  
THOMAS SCALEA, STEVEN SELIGMAN CONSTANCE  
SHAMES, RICHARD SINERT, IAN SHIVACK and  
ARNOLD STRASHUN,

03-9215

**Defendant-Appellees.**

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**APPEARING FOR APPELLANT**

**EUGENE B. NATHANSON, New York, NY**

**APPEARING FOR APPELLEE**

**GRACE GOODMAN, Of Counsel  
(Michael A. Cardozo, Corporation  
Counsel of the City of New York,  
and Larry A. Sonnenshein, Of  
Counsel, on the brief), New York,  
NY**

Appeal from the United States District Court for the Southern District of New York (Samuel Conti, Judge, sitting by designation).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the judgment of said district court be and it hereby is **AFFIRMED**.

Plaintiff-appellant Clifford J. Scheiner appeals from a decision of the United States District Court for the Southern District of New York (Samuel Conti, Judge, sitting by designation) dismissing before verdict, under Fed. R. Civ. P. 50(a), a procedural due process claim asserted by Scheiner against defendant-appellee New York City Health and Hospitals Corporation ("HHC"). We affirm. Familiarity with the facts and procedural history is assumed.

On appeal, Scheiner, who brought suit against HHC and several individuals affiliated therewith following termination of his employment at Kings County Hospital Center in Brooklyn, New York, argues that there was evidence from which the jury could have concluded that HHC's policy or custom violated his procedural due process rights. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978). Accordingly, in his view, the district court erred in granting judgment as a matter of law in favor of HHC on the due process claim. We conclude, however, that any error embodied in that ruling was harmless.

Following the district court's decision on the Rule 50(a) motion, the jury found that none of the individual defendants had violated Scheiner's due process rights. Scheiner does not appeal the jury's verdict. But he argues that HHC could have been held liable for a due process violation even if none of its agents was found liable. That argument must be rejected, given the facts of

this case. While "municipal liability for constitutional injuries may be found to exist even in the absence of individual liability," Barrett v. Orange County Human Rights Comm'n, 194 F.3d 341, 350 (2d Cir. 1999), that is not so where, as here, the plaintiff's theory of liability focuses entirely on the actions of a single individual. See id. The only argument Scheiner makes under Monell -- and the only one available, given the evidence -- is that Dr. Luis Marcos, HHC's president, directly caused the due process injury, and that, because Dr. Marcos is a final policy-maker for HHC, the harm he caused could have been attributed to HHC. See, e.g., Back v. Hastings on Hudson Union Free Sch. Dist., 365 F.3d 107, 128 (2d Cir. 2004) (outlining types of Monell liability). But the jury concluded that Dr. Marcos did not violate Scheiner's due process rights. In light of that conclusion, any finding of liability against HHC under Scheiner's proffered Monell theory would have been insupportable.

For the reasons set forth above, the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:  
Roseann B. MacKechnie, Clerk

By: \_\_\_\_\_  
Lucille Carr, Deputy Clerk